

Under the **FAST-TRACK APPROVALS ACT 2024**

In the matter of an application for approvals in relation to the Waitaha Hydro Scheme

Between **WESTPOWER LIMITED**

Applicant

**EXPERT PANEL: WESTPOWER LTD MEMORANDUM #19
MEMORANDUM OF COUNSEL IN RESPONSE TO COMMENTS ON THE
DRAFT CONDITIONS OF THE FOUR APPROVALS**

Dated: 7 April 2026

BUDDLE FINDLAY
Barristers and Solicitors

Solicitor Acting: Paul Beverley / David Allen / Rachael Balasingam
Email: [REDACTED]

Tel 64 4 463 0423 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

MAY IT PLEASE THE PANEL:

1. This memorandum is filed on behalf of the applicant, Westpower Limited (**Westpower**).
2. On 27 March 2026, the Panel received comments from nine parties on the draft conditions of the four approvals granted by the Draft Decision.
3. Westpower acknowledges the support for the Project again expressed by the Ministers for:
 - (a) Rural Communities and Hunting and Fishing;
 - (b) the South Island; and
 - (c) Māori Development and Māori Crown Relations: Te Arawhiti - on the conditions included in the Draft Decision.
4. Westpower appreciates the comments received and will address matters that do not relate to the Panel's role finalising the conditions outside of the fast-track process.
5. This memorandum:
 - (a) responds to comments received from:
 - (i) the Department of Conservation;
 - (ii) the West Coast Regional Council; and
 - (b) appends more detailed responses and an updated, cross referenced and numbered set of resource management consent conditions as **Appendix 1**.
6. Given updates to the concession, wildlife and freshwater fisheries conditions were also provided with Westpower's Memorandum #18 of 27 March 2026, further versions are considered unnecessary and will simply provide yet more documentation for the Panel.¹

Department of Conservation

7. The Department raised several matters in their legal memorandum dated 27 March 2026. These matters are addressed in turn below and includes issues that overlap between the relevant approvals. This memorandum follows the

¹ [Memorandum-of-Counsel-18-for-the-applicant.pdf](#)

Department's format. Westpower's counsel received correspondence from the Department today relating to the commencement of the concession fee for the construction period. This is addressed at paragraph 29.

8. The Department also provided a table of conditions changes and comments relating to all four approvals. These are responded to in:
 - (a) **Appendix 2:** response to comments on resource consent conditions;
 - (b) **Appendix 3:** response to comments on concession and wildlife approvals.
 - (c) **Appendix 4:** response to comments on freshwater fisheries approvals.

Location of compensation requirements

9. The Department disagrees with the Panel's Draft Decision and seeks that the compensation provisions be repeated in all relevant approvals but only enforceable through the most relevant approval.
10. Westpower supports the approach taken by the Panel in the Draft Decision at [1116].

Receipt of the recreation compensation

11. The Department considers that it must receive the recreation compensation required to be paid under the concession conditions.
12. Westpower has no issue with the recreation compensation being paid to the Department. However, Westpower remain conscious of Mr Greenaway's position that:
 - (a) money goes further with volunteer groups than the Department;³ and
 - (b) volunteer groups have a history of redeveloping and maintaining tracks in the Waitaha Valley.⁴
13. Westpower considers it appropriate that the compensation is used in the Waitaha Valley to address the localised significant recreation effect along the abstraction reach. Westpower does not consider that a purpose is required, as sought by the Department, nor does it consider that reference to walking tracks and huts should be deleted. Should the Panel wish to adopt the

³ As answered to the Panel in the Panel Overview Conference on 14 November 2025.

⁴ [Waitaha Hydro Westpower - recreation assessment](#), at D.32.

Department's preference, Westpower has included a fit-for-purpose amended Condition 31 in **Appendix 3**.

The amount of recreation compensation

14. The Department considers that the recreation compensation determined by the Panel is "inadequate and inappropriate, being disproportionately small to the recreation effects it is intended to address."⁵
15. Westpower fundamentally disagrees.
16. Westpower's primary position is that evidence by a new expert (Mr Kerr), in the manner provided, should be disregarded by the Panel, because:
 - (a) The Department is an experienced user of the Fast-track process, legally represented, and understands the tight timeframes involved. It also fully understands the role of the s 51 FTAA comments.
 - (b) There is nothing in Mr Kerr's statement, nor the Department's legal memorandum, explaining why this statement was not provided with the Department's s 51 FTAA comments.⁶
 - (c) It is inappropriate to use this procedural step of responding to the Panel's draft conditions for substantive evidence to bolster the Department's previous evidence.⁷
 - (d) The Panel has made its findings. Providing technical evidence at such a late stage of the process on substantive decisions already made by the Panel does not assist it to make its Final Decision.⁸
17. Subject to the points above, and to ensure in the short time available the Panel has the information it needs to progress as it wishes, Westpower has had Mr Copeland and Mr Greenaway review the new expert evidence and they confirm their position remains the same.
18. Westpower has several comments to make on this:

⁵ Department of Conservation Appendix One 27 March 2026, at paragraph 17.

⁶ Para 24 of Mr Kerr's statement refers to Ms Sidley's appendix being "my workings", this is not acknowledged or explained in Ms Sidley's s 51 Recreation Report.

⁷ Mr Kerr moves into advocacy at paragraph 36 of his statement and gives opinions on recreational benefits at paragraph 38. Such comments are best left to the Department's legal counsel, or Ms Sidley.

⁸ Ms Sidley's statement focuses on paragraph 723 of the Draft Decision and is succinctly summarised by Mr Kerr (at his paragraph 37) as "she does not agree with the Panel".

- (a) Mr Copeland and Mr Greenaway stand by their previous evidence that Mr Kerr's methodology is inaccurate and unhelpful to the Panel (see **Appendices 5 and 6**);
- (b) Westpower's view is there no reliable and robust evidence to justify the Panel imposing more than \$25,000;
- (c) Westpower's view is that **any** economic valuing exercise is fraught with challenges (as explained by both Mr Copeland and Mr Greenaway in their statements attached to Westpower's Memorandum #7) and Westpower's proposal is appropriate;
- (d) there is no statutory test in the FTAA that compensation for a significant RMA or Conservation Act 1987 effect must be aligned with one defined compensation payment;
- (e) this is supported by the drafting of s 83 which is that *"the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion"*; and
- (f) Westpower supports the Panel's conclusion:

794) Overall, we find that while the Scheme may have some more than minor effects in some areas (such as landscape and recreation), the conditions and restrictions we have imposed (including compensation requirements), appropriately address the relevant RMA provisions;

19. The Panel has correctly:

- (a) considered the steps Westpower has taken to avoid, minimise and mitigate the adverse effects of the Project, including the significant localised effect on the recreation experience;
- (b) applied the provisions of the FTAA and evaluated whether the adverse effects it has accepted are proportionate to the regional and/or national benefits of the Project; and

- (c) determined the conditions and overall compensation package is appropriate⁹ and proportionate to the significant regional benefits of the Project; and
 - (d) concluded the residual recreation effect does not warrant the refusal of the approvals.¹⁰
20. The Panel's approach is legally sound and appropriate under the FTAA.

Management Plan certification and dual certification

21. The Panel has minimised duplication and complexity by imposing certification by the relevant council over 'dual certification'. The Department disagrees and seeks "as a matter of principle" that:
- (a) the certification process be provided in the most relevant approval; and
 - (b) dual or joint certification of the management plans is provided to the Department alongside the councils.
22. The Panel considered this issue extensively and robustly in coming to its draft decision that:¹¹

1127) We also do not accept that it is appropriate to impose a joint certification role for DOC for the reasons given by the Applicant (and summarised by us above). While a joint certification role between DOC and a local authority may be legally possible (and we make no express finding in that regard), here, we consider it would add an unnecessary regulatory step, resulting in delays and complexities – particularly if one certifying body considered the condition met, and the other did not. For similar reasons we have not imposed a joint certification role as between WCRC and WDC, instead assigning the certification role to one or the other, as follows:

- a) the CEMP now sits with WDC as the matters to be addressed in the plan are generally district matters; and
- b) the SOMP and SMP now sit with WCRC as the matters to be addressed in the plan are generally regional matters.

1128) We have however ensured that in the conditions we have imposed, DOC and the other council, where relevant, have a right to review the draft

⁹ At [731].

¹⁰ At [882(b)].

¹¹ Also at [1136] in respect of the Panel's concerns with duplicated conditions across approvals.

plans and have their feedback considered and reported on, before the relevant management plan can be submitted for certification.

23. Westpower agrees with the Panel's draft decision and maintains its position on management plans as set out in Memorandum #7 at [2.34].¹² Westpower has, however, considered the Department's concerns and proposes that the DOC liaison officer is retained to assist robust and efficient communication with the parties during construction.

Removal of structures

24. Westpower acknowledges:
- (a) the Department seeks, via s78 of the FTAA, a condition requiring removal of specified structures and other improvements identified by the Minister on expiry or termination; and
 - (b) the Panel's view in the Draft Decision is that it will impose the s 78 condition.

In-stream channel maintenance

25. The Department disagrees with the flexibility the Panel has retained in the resource consent conditions for Westpower to undertake more than 15 in-stream maintenance activities in a single year.
26. The Panel is clear and comprehensive in stepping through the information it evaluated when considering Westpower's concerns about the number of occurrences of in-stream maintenance activities in a year, including that Westpower:¹³
- (a) requires flexibility for maintenance works as required;
 - (b) cannot control when events might occur;
 - (c) must be prepared to respond to an event whenever it happens;
 - (d) proposed, through Mr Jackson, a condition:
 - (i) to undertake a review of the excavator operations over a five-year period; and

¹² [Westpower-Memorandum-7,-Response-to-Comments-and-RFI-3,-21-January-2026_Redacted.pdf](#)

¹³ At [716] to [718].

- (ii) to provide notice of when maintenance might be occurring via a website.

27. The Panel accepted:

- (a) the significant effects associated with its operation as an effect on recreation values rather than landscape values given the intermittent and non-permanent nature of the activity;
- (b) that effects will be limited to those recreational users who are in the vicinity of the lower reaches of Kiwi Flat at the time it is operating;
- (c) that is indicated to be relatively infrequently; and
- (d) that the proposed condition RC111 is appropriate.

28. Westpower agrees and considers the Department's preference to propose a limit of 15 annual occurrences in Condition RC111 is more onerous than necessary. There is no gap in the information considered or evaluated by the Panel to come to its conclusion that the effect is managed appropriately.

Commencement of the concession fee

29. The Department has informed Westpower that it disagrees with Westpower's position in Memorandum #18 that there is an issue between clause 6.2 and Schedule 1 regarding commencement of the concession fee for construction. Westpower's view remains as set out in paragraph 31 of Memorandum #18.

West Coast Regional Council

30. The comments from the West Coast Regional Council (**WCRC**) relate to enforcement and Westpower's obligations to pay third parties to manage effects under the responsibility of the WCRC.

31. WCRC comments it:¹⁴

- (a) would prefer management plans were approved rather than certified;
- (b) has concerns with:
 - (i) proposed conditions that it considers "regulate private arrangements between third parties, rather than matters within

¹⁴ At pages 1 and 2.

the Council's statutory functions" and considers some conditions inconsistent with sections 108 and 108AA of the RMA;

- (ii) monitoring and enforcing the overall condition set;
 - (iii) some conditions imposed being difficult to enforce and inconsistent with the established D.I.C.E principles (CC10, CC33(e), RC69 and RC130-135); and
- (c) many conditions do not have an effects-based justification, and may be subject to cancellation or variations.
32. Where it will assist the Panel, Westpower has responded in **Appendix 2**.
33. We support Mr Jackson in his response in **Appendix 2** that the WWNZ conditions are lawful and enforceable. WWNZ are able to enforce the contract with Westpower. The contractual requirement is that

Westpower will proffer with its Fast-track Approvals consent application the following, or similar, conditions:

The Consent Holder must:

consult with WWNZ on the provision of a portage across and around the weir to ensure the safe passage of kayakers and pay the reasonable and agreed costs of an expert to advise WWNZ in relation to the portage design.

if a bypass valve and system (including generation) is installed and available for use, then during no take days Westpower will operate it as far as reasonable (including in relation to health and safety) to benefit the kayaking experience during the no take days

following commissioning of the Scheme:

offer WWNZ four (4) no take days along the abstraction reach of the Waitaha River per year with one no take day occurring each month during the months of November – February (inclusive) unless agreed otherwise. If the Consent Holder cancels a no take day it must consult with WWNZ to arrange another no take day during the same period or, if that is not practicable, pay WWNZ \$5,000 (excluding GST) per no take day cancelled up to a maximum of \$20,000 (excluding GST) for each period November – February (inclusive). If WWNZ informs the Consent Holder at an annual meeting that it does not wish to use a no take day the

Consent Holder must pay WWNZ \$5,000 (excluding GST) for each period November – February (inclusive).

pay WWNZ \$15,000 (excluding GST) per annum.

make publicly available through its website, in consultation with WWNZ:

information regarding access to and the kayaking opportunities on the Waitaha River; and

information on risks and safety requirements due to the Scheme.

Westpower will use reasonable endeavours to seek to maintain the inclusion of this condition within its consents through the FTA process.

34. Westpower would like to acknowledge the efforts made by the Panel and the assistance of the EPA in getting to this stage of the process.

Dated: 7 April 2026



Paul Beverley / David Allen / Rachael Balasingam

Counsel for Westpower Limited